No. 15-1439

IN THE
Supreme Court of the United States

CYAN, INC., *et al.*,
Petitioners,

v.

BEAVER COUNTY EMPLOYEES RETIREMENT FUND, *et al.*,
Respondents.

On Writ of Certiorari to the
Court of Appeal of the State of California,
First Appellate District

SUPPLEMENTAL BRIEF FOR PETITIONERS

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RULE 29.6 DISCLOSURE STATEMENT

The Rule 29.6 disclosure statement in the opening brief for petitioners remains accurate.

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SUPPLEMENTAL BRIEF FOR PETITIONERS

Respondents' supplemental brief is manifestly improper under this Court's Rule 25.6, and petitioners have filed a letter with the Clerk of the Court asking that it be stricken. In the event that the Court considers the filing, it is also wrong. In a single page, respondents make three assertions, and each one is misleading or false.

First, respondents claim that there has not been a "dramatic increase" in the number of 1933 Act class actions filed in California since the California Court of Appeal first permitted such suits in *Luther* v. *Countrywide Financial Corp.*, 195 Cal. App. 4th 789 (2011). This point is not open to debate. The petition for certiorari included a chart listing every 1933 Act class action filed in California since SLUSA, *see* Pet. App. 30-31, and the Appendix to this brief reproduces and updates that chart. As the data make clear, in the twelve years between SLUSA and *Countrywide*, plaintiffs filed a total of eleven 1933 Act class actions in California state courts, or an average of 0.9 per year. In the six years since *Countrywide*, plaintiffs have filed 53 such suits in California courts, averaging 8.8 per year—that is, a roughly *ninefold* increase. In 2017 alone, plaintiffs filed six suits, more than in the first eight years after SLUSA combined.

Respondents also assert that petitioners were incorrect in stating that "respondents have not identified *any* 1933 Act class action filed in state court until the Reform Act was passed." Reply Br. 22. That statement was unquestionably accurate when petitioners made it: Respondents identified no such

cases in their certiorari-stage or merits briefing, and they do not claim otherwise. Moreover, the statement remains accurate. In their supplemental brief, respondents belatedly identify a number of *mixed cases* filed in state court in the decades prior to the Reform Act. *See* Supp. Br. 1a-4a (listing cases raising both federal securities claims and state-law claims alleging false statements or deceptive conduct). But respondents themselves believe that SLUSA withdraws state-court jurisdiction over mixed cases. Resp. Br. 10. What respondents have not turned up—even after their apparently exhaustive search—is a *single* exclusively 1933 Act class action filed in state court before the Reform Act, let alone a significant number of such actions. Since those are the only cases that petitioners' reading would divest state courts of jurisdiction to hear, respondents' supplemental brief powerfully confirms that adopting petitioners' interpretation would not disturb states' preexisting authority in any meaningful respect. *See* Reply Br. 22.

Finally, respondents suggest that petitioners had no reason to fear sanctions for seeking removal because other defendants sought removal in the same time period and escaped consequences. That cavalier assertion is without merit. Judges in the relevant jurisdiction repeatedly warned that, in light of the unbroken wall of state-court authority deeming removal unlawful, there was no "objectively reasonable basis" for defendants to ask for removal. *E.g.*, *Elec. Workers Local #357 Pension* v. *Clovis Oncology, Inc.*, 185 F. Supp. 3d 1172, 1180 n.6 (N.D. Cal. 2016); *see Martin* v. *Franklin Capital Corp.*, 546 U.S. 132, 141 (2005) (except in "unusual circumstances," fees should be awarded against a party that

seeks removal without an "objectively reasonable basis"). Given that defendants have been sanctioned for pursuing removal nonetheless, petitioners reasonably declined to test the courts' warnings themselves.

CONCLUSION

Respondents' supplemental brief should be stricken, and the judgment below should be reversed.

Respectfully submitted,

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APPENDIX

CLASS ACTIONS ALLEGING CLAIMS ONLY UNDER THE 1933 ACT, FILED IN CALIFORNIA STATE COURTS

***Countrywide* (May 18, 2011) – present:**

	Filing Date	Case Name	Case No.
1.	Sep. 20, 2017	Clayton v. Tintri, Inc.	San Mateo County 17CIV04312
2.	Aug. 11, 2017	Guo v. ZTO Express (Cayman) Inc.	San Mateo County 17CIV03676
3.	May 23, 2017	Simpson v. Snap Inc.	Los Angeles County BC662444
4.	May 22, 2017	Grotewiel v. Avinger, Inc.	San Mateo County 17CIV02240
5.	May 22, 2017	Bucks County Employees Retirement Fund v. NantHealth, Inc.	Los Angeles County BC662330
6.	Feb. 10, 2017	Ng v. Kitov Pharmaceuticals Holdings, Ltd.	San Mateo County 17CIV00620
7.	Nov. 18, 2016	Book v. ProNAi Therapeutics, Inc.	San Mateo County 16CIV02473
8.	Nov. 4, 2016	Hosey v. Costolo (Twitter, Inc.)	San Mateo County 16CIV02228

9.	Sep. 20, 2016	Jackie888, Inc. v ReWalk Robotics Ltd.	San Mateo County 16CIV01454
10.	Sep. 1, 2016	Ramsay v. Pure Storage, Inc.	San Mateo County 16CIV01183
11.	Aug. 19, 2016	Jackie888, Inc. v. Tokai Pharmaceuticals, Inc.	San Francisco County CGC-16-553796
12.	Aug. 11, 2016	Bloom v. Goldman, Sachs & Co. (SunEdison, Inc.)	San Mateo County 16CIV00884
13.	Aug. 5, 2016	Torres v. Kryeziu (Code Rebel Corporation)	Los Angeles County BC629838
14.	May 20, 2016	Wagner v. NantKwest, Inc.	Los Angeles County BC621292
15.	Apr. 28, 2016	Rivera v. Fitbit, Inc.	San Mateo County CIV538403
16.	Apr. 19, 2016	Braun v. NRG Yield, Inc.	Kern County BCV-16-100867
17.	Apr. 13, 2016	Pytel v. Sunrun Inc.	San Mateo County CIV538215
18.	Apr. 4, 2016	Bloom v. SunEdison, Inc.	San Mateo County CIV538022
19.	Mar. 17, 2016	Beck v. Apigee Corporation	San Mateo County CIV537817
20.	Feb. 26, 2016	Geller v. LendingClub Corporation	San Mateo County CIV537300

21.	Feb. 17, 2016	City of Warren Police and Fire Retirement System v. Natera, Inc.	San Mateo County CIV537409
22.	Jan. 25, 2016	Giavara v. GoPro, Inc.	San Mateo County CIV537077
23.	Jan. 22, 2016	Electrical Workers Local #357 Pension And Health & Welfare Trusts v. Clovis Oncology, Inc.	San Mateo County CIV537068
24.	Jan. 14, 2016	Barnett v. Ooma, Inc.	San Mateo County CIV536959
25.	Dec. 7, 2015	Beaver County Employees Retirement Fund v. Avalanche Biotechnologies, Inc.	San Mateo County CIV536488
26.	Dec. 1, 2015	Rezko v. XBiotech Inc.	Los Angeles County BC602793
27.	Nov. 19, 2015	Kleiman v. Sientra, Inc.	San Mateo County CIV536313
28.	Oct. 23, 2015	Fraser v. Wuebbels (TerraForm Global, Inc.)	San Mateo County CIV535963
29.	Oct. 5, 2015	Buelow v. Alibaba Group Holding Limited	San Mateo County CIV535692
30.	Aug. 24, 2015	Steinberg v. MobileIron, Inc.	Santa Clara County 1-15-CV-284761
31.	Aug. 11, 2015	Shen v. TrueCar, Inc.	Los Angeles County BC590999
32.	July 21, 2015	Cervantes v. Dickerson (Etsy, Inc.)	San Mateo County CIV534768

33.	June 2, 2015	Hunter v. Aerohive Networks, Inc.	San Mateo County CIV534070
34.	May 1, 2015	City of Warren Police and Fire Retirement System v. Revance Therapeutics, Inc.	San Mateo County CIV533635, transferred on Nov. 6, 2015 to Santa Clara County 15-CV-287794
35.	Apr. 2, 2015	Firerock Global Opportunity Fund LP v. Castlight Health, Inc.	San Mateo County CIV533203
36.	Mar. 20, 2015	O'Donnell v. Coupons.com, Inc.	Santa Clara County 1-15-CV-278399
37.	Mar. 17, 2015	Debotte v. King Digital Entertainment PLC	San Francisco County CGC-15-544770
38.	Jan. 29, 2015	City of Warren Police and Fire Retirement System v. A10 Networks, Inc.	Santa Clara County 1-15-CV-276207
39.	Jan. 6, 2015	Liu v. Xoom Corp.	San Francisco County CGC-15-543531
40.	Oct. 16, 2014	Berliner v. Pacific Coast Oil Trust	Los Angeles County BC560944
41.	Sep. 5, 2014	Plymouth County Retirement System v. Model N, Inc.	San Mateo County CIV530291
42.	June 20, 2014	In re FireEye, Inc. Securities Litigation	Santa Clara County 1-14-CV-266866

43.	Apr. 3, 2014	Rajasekaran v. CytRx Corp.	Los Angeles County BC541426
44.	Apr. 1, 2014	Beaver County Employees Retirement Fund v. Cyan, Inc.	San Francisco County CGC-14-538355
45.	July 10, 2013	Desmarais v. Johnson (CafePress Inc.)	San Mateo County CIV522744
46.	Oct. 19, 2012	Toth v. Envivio, Inc.	San Mateo County CIV517481
47.	Sept. 13, 2012	Robinson v. Audience, Inc.	Santa Clara County 1-12-CV-232227
48.	Aug. 1, 2012	Reyes v. Zynga Inc.	San Francisco County CGC-12-522876
49.	May 30, 2012	Lapin v. Facebook, Inc.	San Mateo County CIV514240
50.	Mar. 13, 2012	Marcano v. Nye (Zeltiq Aesthetics, Inc.)	Alameda County RG12621290
51.	Oct. 21, 2011	Young v. Pacific Biosciences of California, Inc.	San Mateo County CIV509210
52.	Sept. 27, 2011	Harper v. Smart Technologies, Inc.	San Francisco County CGC-11-514673
53.	July 1, 2011	West Virginia Laborers' Trust Fund v. STEC, Inc.	Orange County 30-2011-00489022

SLUSA (Nov. 3, 1998) - *Countrywide* (May 18, 2011):

	Filing Date	Case Name	Case No.
1.	Jan. 20, 2009	IBEW Local 103 v. IndyMac MBS Inc.	Los Angeles County BC405843
2.	Dec. 5, 2008	Connecticut Carpenters Pension Fund v. Merrill Lynch	Los Angeles County BC403282
3.	Dec. 2, 2008	Public Employees' Retirement System of Mississippi v. Morgan Stanley	Orange County No. 30-2008 00226005
4.	Dec. 19, 2008	Swiskay v. Wachovia Corp.	Alameda County RG08426378
5.	Apr. 15, 2008	Layne v. Countrywide Financial Corp.	Los Angeles County BC389208
6.	Nov. 14, 2007	Luther v. Countrywide Home Loans Servicing LP	Los Angeles County BC380698
7.	July 29, 2005	Purowitz v. DreamWorks Animation SKG, Inc.	Los Angeles County BC337475
8.	Mar. 9, 2005	Pipefitters Local 552 and 633 Pension Trust Fund v. Salem Communications Corp.	Ventura County CIV232456
9.	May 9, 2003	Valuepoint Partners, Inc., v. ICN Pharmaceuticals, Inc.	No.: 03CC00180
10.	Mar. 11, 2003	Hawaii Structural Ironworkers Pension Trust Fund v. Calpine Corp.	San Diego County GIC806973
11.	Sept. 23, 2002	Brody v. Homestore, Inc.	Los Angeles County BC281956